



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,087	04/10/2006	Norbert Mencke	LEA 365-44	4064
71285 7590 10/07/2010 BAYER HEALTHCARE LLC P.O. BOX 390 SHAWNEE MISSION, KS 66201				
EXAMINER SULLIVAN, DANIELLE D				
ART UNIT 1617		PAPER NUMBER		
NOTIFICATION DATE 10/07/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

janis.wright.b@bayer.com
jessica.monachello.b@bayer.com
andrea.ewell.b@bayer.com

Office Action Summary

Application No.

10/541,087

Applicant(s)

MENCKE ET AL.

Examiner

DANIELLE SULLIVAN

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date 2/01/2010
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim 1 was amended in the amendment filed 12/02/2009. Claims 5 and 6 are cancelled. Claims 1-4 are pending examination.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/2/2009 has been entered.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 2/01/2010 has been considered by the examiner.

Withdrawn rejections

Applicant's amendments and arguments filed 3/09/2009 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below is herein withdrawn. In view of applicants amendment to claim 1 a new rejection has been necessitated. Applicant's arguments filed 12/02/2010, with regard to Knauf et al. have been fully considered and are persuasive. All rejections in view of Knauf et al.

have been removed because Knauf is directed to formulations with a pesticidal effect which kill and do not repel the arthropods.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Any negative limitation or exclusionary proviso must have basis in the original disclosure. Claim 1 has been amended to exclude lice capable of infecting humans. The specification fails to provide support for this limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Snyder (US 6,063,771) as evidenced by Sembo et al. (US 6,201,017).

Snyder discloses formulations comprising spinosyn (abstract). The composition is used to control lice in humans (column 2, lines 27-43). Natural pyrethrins are also taught to be used for the control of lice (column 1, lines 60-67). Spinosyn and natural pyrethrins may be combined and formulated as shampoos, lotions or conditioners (column 4, lines 5-20). As evidenced by Sembo et al. the pests controlled include Diptera and Acarina (ticks) because the combination was already known to control other arthropod pests (column 7, lines 24-35). Therefore, the formulation would inherently control ticks and Diptera when applied to a warm-blooded species.

Response to Arguments

Applicant's arguments filed 12/02/2010, with respect Snyder (US 6,063,771) have been fully considered and are not persuasive.

Applicant argues that Snyder does not teach a repellent effect and only teaches the control of lice. The Examiner is not persuaded by this argument because Snyder teaches the definition of controlling lice refers to treating the lice or preventing and infestation (column 2, lines 63-65). One of ordinary skill would know that by preventing infestation, as specified in the definition of controlling in Snyder, the insects would not be killed but instead repelled from making an infestation in the first place. Hence, the formulation inherently repels insects. Furthermore, although only the control of lice is discussed, as evidenced by Sembo, the composition was already known to be used for the control of other arthropods.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sembo et al. (US 6,201,017).

Applicant's Invention

Applicant claims the method controlling arthropods, wherein the arthropods exclude lice comprising applying and effective amount of a pyrethroid or pyrethrin in combination with a nicotinic agonist to a warm-blooded species. Claim 4 limits the specific arthropods to being selected from ticks, fleas, midges or flies.

Determination of the scope and the content of the prior art

(MPEP 2141.01)

Sembo et al. teach ectoparasite-controlling agent for animals comprising 0.1-20% by weight of the neonictinoid compounds and 10-95% of a glycol as a spot-on or pour-on treatment (abstract). The agent may comprise other actives selected from pyrethroid compounds, phenothrin (type I pyrethroid), cyfluthrin (type II pyrethroid) (column 6, lines 54-57). The pests controlled include Diptera and Acarina (ticks) (column 7, lines 24-35).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Sembo et al. do not exemplify applying the neonictinoid in combination with pyrethroid compounds.

Finding of prima facie obviousness

Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Sembo et al. and select a pyrethroid with a neonictinoid in a method of controlling ticks, thrips and other sucking pests. One would have been motivated to utilize this method because one of ordinary skill would have been able to select a pyrethroid for the finite list of possible actives for use in the control of arthropods.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE SULLIVAN whose telephone number is (571)270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fereydoun Sajjadi can be reached on (571) 272-3311. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan
Patent Examiner
Art Unit 1617

/Joanne Hama/
Primary Examiner, Art Unit 1632